IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10283 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VALLABHBHAI MAGANBHAI BAMANIYA

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR KT DAVE AGP for Respondent No. 1 to 3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/03/2000

ORAL JUDGEMENT

#. District Magistrate, Dahod, passed an order on September 28, 1999 in exercise of powers under section 3(2) of the Prevention of Black Marketing and Maintenance

of Supply of Essential Commodities Act, 1980 ("PBM Act" for short), detaining the petitioner under the provisions of the PBM Act.

#. The grounds of detention indicate that the detaining authority took into consideration the fact that the petitioner was indulging in the activity detrimental to the supply of essential commodities. That he was found to have used bogus cards and usurped the supply of essential commodities supposed to be sold to such ration card holders for which he was having license of fair price shop. The said order is challenged by the petitioner in this petition under Article 226 of the Constitution of India.

#. The petitioner has raised many points but the main points are that the detaining authority has formed a conclusion about the petitioner being engaged in using fake cards on the basis of the statement of persons who are non-existent and who have died 9 years back. The entire foundation of the subjective satisfaction is therefore, false and defective and therefore, the detention is rendered bad in law. Another contention that is raised is that the representation made by the detenue to the detaining authority, after the detention was approved by the government, has not been forwarded immediately to the government but has been rejected. This action on the part of the detaining authority suffers from two defects, namely, consideration of representation without authority and delay therein.

#. Mr. Thakkar, learned counsel appearing for the petitioner has restricted his arguments to the above ground only and submitted that the detaining authority could not have rejected the representation made by the detenue once the detention was approved by the State Government. It was expected of the detaining authority to have forwarded the representation immediately without any delay. Instead, the detaining authority had rejected the representation which the detaining authority was not authorized to do and there also, there is delay in considering the representation. Both ways, the continued detention of the detenue stands vitiated. Mr. Thakkar submitted further that the detaining authority has based the order of detention on statements of some card holders, two of whom had expired 9 years back. Thus, the statements are therefore, fake and/or fabricated. The entire order of detention therefore would stand vitiated. Mr. Thakkar submitted that this aspect was brought to the notice of all the authorities concerned in the representation and no heed has been paid thereto by any

of the authorities. This reflects non application of mind on the part of the authorities concerned, and therefore also, the continued detention would be rendered bad in law. Mr. Thakkar therefore submitted that the order of detention may be quashed by allowing this petition.

#. Mr. K.T.Dave, learned AGP has opposed this petition on behalf of the State of Gujarat and the detaining authority. He submitted that the statements were recorded by Supplies Inspector and he could not have known the identity of the person giving statements. As such, there is no defect because there is other material also against the detenue which is good enough for detaining the detenue. He therefore urged that the petition may be dismissed.

#. Ms. Davawala has opposed this petition on behalf of the Union of India.

#. Considering the contentions raised by learned counsel for all the parties, it is evident that the order was passed on September 28, 1999, which was approved by the State Government on October 8, 1999. According to the detaining authority, representation dated October 6, 1999 was received by him on October 8, 1999. He does not state in his affidavit as to what he did with that representation. He further states that another representation dated October 23, 1999 was received by him on October 25, 1999. He says that the same was replied by letter dated October 28, 1999 to the detenue. Mr. Thakkar has produced on record zerox copy of that reply, which says that the representation is received on October 25, 1999 and after careful consideration, it has not been accepted.

#. Now therefore, picture that emerges is that there is nothing to indicate as to what happened to the representation dated October 6, 1999 made by the detenue to the detaining authority which was received by the detaining authority on October 8, 1999. The detaining authority has not stated anything in this regard and therefore, this representation can be presumed to have remained unattended, which would render continued detention illegal.

#. Another aspect that emerges is that the representation dated October 23, 1999 was received by the detaining authority on October 25, 1999, which has been rejected by the detaining authority. The representation was made after the approval of the detention by the State

Government on October 8, 1999, which was received after the approval by the State Government, and therefore, the detaining authority was only required to forward the same to the State Government immediately without any delay. The detaining authority had become functus officio and could not have either rescinded or revoked or modified the order and as such the detaining authority was expected to forward the same and not decide the same. In this regard, the decision in the case of Navalshanker Ishwarlal Dave v. State of Gujarat, AIR 1994 SC 1496 can be profitably referred to. In view of this legal position, consideration of the second representation by the detaining authority was without authority/jurisdiction. This has rendered the continued detention of the detenue illegal.

##. Apart from the above defects, it appears that the State Government has not taken into consideration The representation on the aspect of authenticity and genuineness of the statements of Baria Manabhai Zinabhai and Dholabhai Premabhai Deval. The detaining authority has considered the statements of these two persons while passing the order of detention, whereas in fact, these two persons have been non-existent for last 9 years from 1.10.99 as can be seen from the certificate issued by Talati-Cum-Mantri of Nelsur Village Panchayat and has rejected the representation. Even when such gross defect brought to the notice of the State Government in passing the detention order, it has been been lightly brushed aside by rejecting the representation. This would also render continued detention bad in law.

10.1 The argument that other grounds were good enough to sustain the detention and therefore representation was rejected cannot be accepted. The detaining authority was, while passing the order of detention, influenced by the statements of two persons who were in fact non-existent for about 9 years. This would vitiate the order of detention as a whole. Human mind is not possible to be compartmentalised. And therefore, it cannot be said that false statements had hardly any bearing on the decision of detaining authority. What was the extent of impact on decision making process in the mind of detaining authority is not possible to be known. What weightage was given to this part of the material, while it was considered by detaining authority cannot be ascertained. The detention order would be rendered bad in eyes of law, therefor. Even if, this irrelevant, unauthentic & unreliable material in form of purported statements of persons who have died nine years back is relied upon only fractionally, it would affect the

decision making process and would vitiate the subjective satisfaction recorded by detaining authority. The orders under such circumstances, cannot be supported.

##. Apart from the above defects rendering the continued detention illegal, another aspect that is eye catching is that the statements of two persons have been relied upon by the detaining authority while coming to conclusion that the petitioner is indulging into such activity to derive personal gains out of the use of ration cards of certain ration card holders. Atleast two of such persons had expired 9 years back and their statements are claimed to have been recorded by Supplies Inspector. This indicates that either Supplies Inspector has not properly recorded the statements and it is only table work that is done by him or that while recording statements, the Supplies Inspector has not properly verified and satisfied himself about the identity of the person who was giving statement. This also reflects non-application of mind and mechanical proceduring by the Supplies Inspector.

11.1 In such cases, duties are to be performed with all seriousness. Orders based on such statements would have a direct bearing on personal liberty of an individual, leave apart his reputation in society. The detaining authority also ought to have seriously considered these aspects while passing the order and ought to have reassured himself about trustworthiness and authenticity of such statements before relying upon them while passing the orders. It is the subjective satisfaction of the detaining authority that plays a vital role in passing such orders and on the basis of mere statements recorded by some officers subordinate to the detaining authority, the detention order could not have been passed. The detaining authority ought to have himself personally verified the statements on aspects of its correctness and genuineness before relying on it. Absence of this exercise has resulted into the passing of a defective order, which has adversely affected the liberty of an individual. It is hoped that the authorities concerned will be appropriately directed to use due diligence while exercising such important powers while accepting such material.

##. For the above-stated reasons, the order of detention is rendered bad in law so also the continued detention. The petition, therefore, deserves to be allowed.

##. The petition is allowed. The impugned order of detention dated September 28, 1999 passed by the District

Magistrate, Dahod is hereby quashed and set aside and the detenue - Vallabhbhai Maganbhai Bamaniya, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L.DAVE, J.]

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